Secret. II-27—40,000—27-10-48.

(195) Department.

SERIES. R-14/E

G.O. No. 2943

Dated 29-11-48

[Despatch Abstract.]

Elections - New Constitution - Electoral rolls - Preparation
Enumeration of persons of unsound mind - Papers recorded.

Special

Copy of/letter Rc.No.1841/48 G.8 dated 20-9-48 from the Collector of Tanjore, Tanjore to the Additional Secretary to Government, Public (Elections) Department, Madras-9.

Sub: Elections -- New Constitution - Adult Franchise - Draft preliminary electoral rolls - preparation - filling up enumeration forms - enumeration of persons not having residential qualifications - instructions - requested.

Ref: G.O.No.2008, Public (Elections) dated 19-8-1948.

In connection with the enumeration of voters, I submit the following for the consideration of the Government and issue of urgent orders.

There may be cases where the individuals to be enumerated are incapacitated to affix their signature or thumb impressions to the enumeration forms by reason of any physical infirmity or disease e.g., Leprosey, to hold a pen or to affix the thumb impression. I would suggest that in such cases, the enumerators may fill up the forms in the presence of one or two respectable resident adult witnesses of the locality and append an appropriate certificate in the following* form at the foot of the enumeration forms and also obtain the signatures of the witnesses in the enumeration form.

"* Certified that the individual enumerated in this form is physically incapacitated (here enter briefly the nature of physical incapacity) to sign the enumeration form or to affix the thumb impression and that this form was filled up by me with reference to the oral information furnished by the individual enumerated in the presence of respectable adult witnesses residing in the locality, whose signatures have also been obtained in this form, as witnesses."

2. According to Annexure II, (1-(1)(c)) no person is entitled to be registered as a voter in the draft preliminary electoral rolls if he or she is of unsound mind and stands so declared by a competent court. This means that if any eumerator finds anyone to be of unsound mind, which fact -however, may not be supported in all cases by a certificate of competent court, he must enumerate him. This may not be possible as the individual to be enumerated will not be able to give coherent answers by reason of unsoundness of mind to enable the filling up of the enumeration form and to sign the declaration. The instructions, as they are, do not empower the enumerator to refuse to enumerate any individual who may really be of unsound mind in the absence of a certificate by a competent court. But it does not appear to be the intention of the Government to enumerate a person of unsound mind irrespective of the fact whether he or she is so declared by a competent court or not. I submit that for the word "and", between "mind" and "stand" in item(c) of 1-(1) of Annexure II to the G.O., the word 'or' may be substituted, in which case an enumerator can omit to enumerate a person if in his judgment that person is of unsound mind, regardless of the fact whether he or she stands so declared by a competent court. Any individual who thinks that he has been incorrectly taken to be of unsound mind and not enumerated, may seek enrolment with reference to instructions in paragraph 7(1) of Annexure II relating to, supplementary enumeration.

3. One of the requisite qualifications for a voter is that he or she should have resided in the electoral unit of the area where his or her name is to be included for

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for a period of not less than 180 days during the financial year ending 31-3-1948. There may be cases, particularly of public servants, whose stay in any particular place during 47-48 might not have been 180 days or more and they will not be entitled to be included as a voter. In such cases their enumeration may be ordered to bed done at the places where they actually reside on the dates of enumeration and the residential qualification may be dispensed with in regard to public servants.

I request urgent orders on the above points.

Sd. x x
for Collector.

ELECTIONS-IMMEDIATE.

GOVERNMENT OF MADRAS.
Public (Elections) Department.
Memo.No.5219/48-1, dated the 27th September'48.

Elections - New Constitution - Electoral Rolls - Preparation - Enumeration of persons of unsound mind.

Ref: Letter from the Collector of Tanjore Rc.1841/48 G8 dated 20th September 1948.

Paragraph 1 of the Collector's letter:

The attention of the Collector of Tanjore is invited to the instructions issued in paragraph 1 of Memo.No.5263/48-5 Public(Elections) dated 27th September 1948.

Paragraph 3 of the Collector's letter:

The matter is under the consideration of the Government and instructions will issue within a few days.

Paragraph 2 of the Collector's letter:

The matter is under the consideration of the Government and instructions will issue shortly. Pending the receipt of any instructions to the contrary, the qualification as laid down in paragraph 1 (1)(c) of Annexure II to G.O.No. 2008, Public(Elections) dated 19th August 1948 which follows the provisions of the existing Constitution, should be strictly applied, that is to say, even persons, who, in the opinion of the enumerator, are of unsound mind, should not be left out, unless they have been declared to be of unsound mind by a competent court. If, however, the enumerator finds that a person is, on account of his unsoundness of mind, unable to understand the declaration in the enumeration form and sign or affix his thumb impression in token of his having understood and subscribe to the declaration, such persons should be left out. He may agitate his claims by way of application at the stage of supplemental enumeration or atk the later stage of 'claims and objections' after the rolls have been statutorily published.

J.I. Arputhanathan,
Asst.Secy. to Government.

To
The Collector of Tanjore.
Copy to all other Collectors with a copy of Tanjore Collector's letter.

Forwarded/By Order
Sd. x x
Superintendent.

p.t.o

ELECTIONS-IMMEDIATE.

GOVERNMENT OF MADRAS
Public(Elections)Department.
Memo. No.5219/48-3,dated the 2nd October 1948.

Sub: Elections - New Constitution - Electoral Rolls - Preparation - Enumeration of persons of unsound mind.
Ref: Govt. Memo No.5219/48-1 Public(Elections) dt. 27-9-48.

It has been suggested that, in a difficult and debatable matter of this kind, it is better not to attempt to anticipate the decisions that may be taken in regard to the enumeration of such persons under the New Electoral Law that will be enacted after the New Constitution has come into force, and that the procedure now adopted in connection with the enumeration of such persons should be one which would facilitate the expenditious re-consideration of these cases if the statutory provision in regard to such persons under the existing Constitution is changed in the New Electoral Law. The following instructions are accordingly issued, in supersession of those contained in the Government Memo cited above with reference to paragraph 2 of the letter from the Collector of Tanjore disposed of therein:

(1) If the enumerator finds that a person, who is otherwise qualified to be registered as a voter, is of unsound mind AND stands so declared by a competent Court, such person should not be enumerated.

(2) In cases in which the enumerator is of the opinion that the person whose enumeration is under his consideration is of unsound mind, but finds that he or she has not been so declared by a competent Court - most cases of persons of unsound mind are likely to be found to fall under this category - the procedure specified below should be adopted:

An enumeration form should be duly filled in, in respect of such a person also, if he is present, the relevant particulars being obtained by questioning also the inmates of the same house or neighbours, if necessary. The enumerator should also endeavour to obtain the signature or thumb impression, as the case may be, of the person enumerated, and thus complete the enumeration, though the person enumerated may not, in the opinion of the enumerator, have understood the proceedings or the significance of the declaration. The enumerator should attach to the enumeration form a separate note, signed and dated by him, recording the questions put by him to the person enumerated, the latter's answers to the questions, and his (enumerator's) reasons, including his observations of the acts and behaviour of the person enumerated at the time of the enumeration, for his opinion that the person is of unsound mind. If the enumerator is unable to obtain the signature or the thumb impression of the person enumerated, he should also record that fact and the reason why he was not able to obtain it.

All the enumeration forms together with the connected notes relating to such cases, should be packed together by the enumerator, IN A SEPARATE BUNDLE, marked "Enumeration forms relating to persons of unsound mind". These bundles will, after scrutiny by the Tahsildar or the Deputy Tahsildar, as the case may be, be kept in safe custody in the office of the Tahsildar or the Deputy Tahsildar. But the enumeration forms will not be taken into

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into account when preparing the manuscript electoral rolls, and no further action will be taken on them, pending the receipt of further instructions from the Government.

S. Venkateswaran,
Addl.Secy. to Government.

To
All Collectors.

True copy/forwarded/by order

Sd. x x
Superintendent.

GOVERNMENT OF MADRAS
Public (Elections) Department

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Letter Ref.No.5219/48-5,dated 18-10-48.

To
The Secretary,
Constituent Assembly of India,
Council House, New Delhi.

Sir,

Elections - New Constitution- Electoral rolls - Enumeration of persons of unsound mind.

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According to the qualifications prescribed in Appendix I to your letter No.CA/64/RR/47 dated 15th March 1948, no person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent Court. This follows the provision in the existing Constitution in respect of franchise for the Provincial and Central Legislatures.

2. This Government have examined the question of inclusion, in the draft preliminary electoral rolls now under preparation, of persons of unsound mind and have issued the following instructions:-

(1) If the enumerator finds that a person, who is otherwise qualified to be registered as a voter, is of unsound mind AND stands so declared by a competent Court, such person should not be enumerated.

(2) In cases in which the enumerator is of the opinion that the person whose enumeration is under his consideration is of unsound mind, but finds that he or she has not been so declared by a competent Court;-- most cases of persons of unsound mind are likely to be found to fall under this Category -- the enumerator should include all such persons in a separate list. The grounds on which the enumerator holds the view, together with the questions put to, and the answers given by, the alleged idiot or lunatic should form part of the record.

The completed enumeration forms -- vide paras 3 and 4 of Annexure II to this Government's Order No.2008, Public (Elections), dated 19-8-1948 -- relating to persons falling under category (2) are being kept separately, and the further action to be taken on them will be decided on receipt of your reply to this letter. In regard to this category of cases, this Government consider that such action, as may in fairness be prescribed, should be taken to eliminate persons who are not of sufficiently sound mind to exercise their franchise and that the new electoral law should make provision accordingly in modification of that in the existing electoral law referred to above. This Government would suggest that the new electoral law should lay down that the

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the Revising Authority for the area concerned, which will enquire into all claims and objections in respect of the inclusion or exclusion of persons in the electoral rolls, should SUO MOTU look into eabh of the cases so listed, and pass orders as to inclusion or exclusion, according to its best judgment, after issuing a notice of hearing to the person concerned and after hearing him or his authorised representative, and after making such inquiry as it thinks fit. This procedure is suggested because the existing remedy in Civil Courts, though it has the advantage of being careful and thorough, is expensive and slowy and inadequate for this purpose. If a person, whose name has been omitted by the Revisigg Authority from the roll on the ground that he is an idiot or of unsound mind, feels aggrieved by such omission, it may be left to him to obtain a declaration from the Court to the effect that he is not so handicapped for exercising his franchise and that the omission of his name is not proper or valid, and if any order of a competent Court to this effect is produced, then, his name should be included in the electoral roll by the Registration Officer, under a special mandatory provision in this regard in the new electoral law, even though the rolls may have become final otherwise and may have been published accordingly by the time the order is produced.

3. Persons who are of sound mind at the time of the enumeration, but are found to be of unsound mind at the time of the actual voting, need not be denied the right to vote. It does not seem possible to ppovide for an administratively practicable, and at the same time fair, method of deciding such complications on the spot at the polling booths, and we must accordingly allow such persons also to vote if they turn up at the booths.

4. I am to remit the above suggestions for the consideration of the Gonstituent Assembly of India and to request a very early reply.

Yours faithfully,

Sd. x x

Chief Secy. to Government.

CONSTITUENT ASSEMBLY OF INDIA

IMMEDIATE. Council House,
New Delhi, dt.30th Oct.1948.

To

The Additional Secretary to the Govt. of Madras,
Public (Elections) Department, Madras.

Dear Sir,

I am desired to acknowledge the receipt of your letter No.5219/48-5, dated the 18th October 1948 and to state that while we agree that very few persons of unsound mind are in fact declared as such by courts, we are not convinced that that would by itself be sufficient ground for empowering revising authorities to exclude the name of any person from the electoral roll on the alleged ground that he is an idiot or is of unsound mind. In our view, your proposal, if accepted, is likely to give rise to serious consequences in as much as the allegation that a person is an idiot or of unsound mind can be made against any person and it will fall to the lot of that person to establish that he is not so. On the other hand, the normal rule should be as it now is i.e., to consider every person as of sound mind unless he is declared to be otherwise by a competent court. It is accordingly suggested that we should ppoceed on the basis that no special provision as suggested by

Not so easy. The enumerating authorities can easily reject unfounded allegations.
Sd. xxxx
4-11.

by you would be included in the new electoral law to be enacted under the new Constitution.

2. I am also to observe that your suggestion that persons aggrieved by the decision of the revising authority should have recourse to courts is contrary to the salient provision which ousts the jurisdiction of courts in electoral matters at present included in your electoral rules -- vide rule 7 of the Madras Legislative Assembly (Preparation, Revision and Publication of Electoral Rolls) Rules, 1936. Nothing should be done which would disturb the finality which the rules are designed to give to the rolls as finally published.

Yours truly,
YSd. P.S.Subramanian,
Under Secretary.

Take copy and send to Addl.Secretary for perusal at Camp.

J.I.A./3-11-48.

/true copy/

V.K. It will be no use pursuing this matter any further. Fortunately, the number of persons of unsound mind is very small and will be a negligible fraction of our new electorate. The Constituency's views may therefore be accepted and Collectors asked to apply strictly the qualification as it stands. Draft accordingly for circulation to H.M.(Fin) & H.Pr. Legal should see before circulation.

Sd. x x
4-11-48.

7572/5-11-48.

A.S.(III) Pub.(Elens).

Elections-Immediate. GOVERNMENT OF MADRAS
Public(Elections) Department.
Memo.No.5219/48-7,dated 23rd Novr.1948.

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Elections - New Constitution - Electoral rolls - Preparation - Enumeration of persons of unsound mind.
Ref: Govt. Memo. No.5219/48-3,Public(Elections) dt.2-10-48.

In continuation of the Memorandum cited, Collectors of districts are informed that it has been decided that every person should, for the purpose of the franchise, be considered of sound mind unless he is declared to be otherwise by a competent Court. Collectors are therefore requested to apply strictly the qualification as it stands. The enumeration forms relating to persons of unsound mind which were ordered to be kept separately in the Memorandum cited need not be so kept and they should be taken into account in the prepaation of the manuscript electoral rolls.

S. Venkateswaran,
Addl. Secy. to Government.

To
All Collectors.

/forwarded/by order

Sd. x x
Superintendent.

NOTE-FILE

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NOTE-FILE.

Public (Elections)Department

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Elections - New Constitution - Electoral Rolls - Preparation - Enumeration of voters.
Ref: From the Collector of Tanjore, Rc.18414/48,G8, dt. 20th September 1948.

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Please see the letter from the Collector of Tanjore in the c.f.

Para 1: The point raised in this para was already examined in another file in which the Asst.Secretary made a similar suggestion. No action seems called for in this file.

A somewhat similar problem that may face the enumerators will be the enumeration of the blind, deaf and dumb. In the case of the blind persons, the procedure of reading over the details furnished by him, as in the case of illiterates, seems to be sufficient. As regards deaf or/and dumb, great difficulty may be experienced in getting answers from the persons themselves to the questions regarding name, father's name etc. unless they are literate. In such cases, the enumerator may fill up the form by getting such information from the person's parents or near relatives or neighbours and append a certificate to that effect.

Obvious tips. The enumerators will adopt these expedients. No instructions need. Sd. x x 26-9.

Para 2: Para 1 (1) (c) of Annexure II to G.O.No.2008, Public (Elections), dated 19-8-1948, states that a person will be entitled to be registered as a voter in the draft preliminary electoral rolls if, among other things, he or she is not of unsound mind and stand so declared by a competent court. This follows para 4 of the Sixth Schedule to the Government of India Act, reproduced below:-

> "No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court"

The old Central Legislative Assembly Electoral Rules and the Council of State Electoral Rules similarly lay down that a person adjudged by a competent court to be of unsound mind alone shall be disqualified.

The law is therefore particular that a person should be not merely of unsound mind but that he should stand so declared by a competent court. The intention is obviously that such a grave matter as unsoundness of mind should be determined by a competent court and should not left to the opinion of a individual. This provision would have worked well under the old restricted franchise when a person possessing a qualification like literacy, payment of profession tax, property tax etc, was unlikely to be of unsound mind. But under the new Constitution with its universal suffrage, this problem assumes serious propertions. It is admitted by all authorities that owing to peculiar conditions in India, the number of persons who have been declared as unsound in mind by competent courts is far less than the number who are really of unsound mind. A person may be unable to give any coherent answers or may give absurd answers, by reason of unsoundness of mind, to enable the filling up of the form and sign the declaration and yet he may not actually be declared to be of unsound mind by a competent court. In

Literacy and property tax may go together with lunacy! Sd. x x

p.t.o

In such a case, the best thing seems to be for the enumerator to leave him out of the enumeration and informm the perso nx formally that he can apply during the supplemenentary enumeration. A person who takes the trouble to apply during the supplementary enumeration or when claims are invited under the New Electoral Law will be sane enough. All that he will have to prove is that he is not of unsound mind and stand so declared by a competent authority. However, this option to deny enumeration of persons of unsound mind should be used by enumerators sparingly and only when they fail to get coherent answers after persistent questioning.

Para 3: The question of Public servant vis a vis the residential qualifiaation has been examined in a separate file. No action seems called for here.

Our instructions in para 1 (1) (c) are based on the instructions of the Constituent Assembly of India in its letter No.CA/64/RR/47, dated 15-3-1948 - vide paragraph (1)(2) to Appendix I to that letter at (j).

In view of the statutory provisions under the existing constitution and in view of the instructions of the Constituent Assembly of India referred to above, it will not be in order for this Government to issue executive instructions at variancex with those instructions. It may be recalled that in 2 instances we departed from the instructions issued by the Constituent Assembly of India, viz., to record the details of castes of persons not belonging to minority communities and to draw up two lists, one relating to Scheduled Castes and one to Scheduled Tribes; The Constituent Assembly of India have asked us to stick to their instructions but we are going to write to them justifying our action. Therefore, in this case we need not depart from the instructions given to us by the Constituent Assembly of India as they are based on the provisions of the statutory rules under the existing Constitution.

It is for orders, however, whether the position may be explained to the Constituent Asembly of India and their instructions taken whether enumerators can refusex to enumerate persons who are patently unsound in mind even though they have not been so declared by a court of competent authority.

Sd. x x
24-9-48.

Asst.Secy.

Paragraph 1 of the Collector's letter: Detailed instructions have already been issued. Invite the Collector's attention to those instructions.

Paragraph 3 of the Collector's letter: This question has already been taken up and I have circulated the file for orders. Inform the Collector that the mater is under the consideration of the Government and that instructions will issue within a few days--before the end of the month.

Paragraph 2 of the Collector's letter: Inform the Collector that the matter is under the consideation of the Government, that instructions will issue shotly and that, pending receipt of any instructions to the ontrary, the qualification as laid down in paragraph 1 (c of Annexure I to the G.O., and which follows the provision of the existing Constitution, should be STRICTLY APPLIED, that is to say,

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NOTE-FILE.

Public (Elections)Department

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Elections - New Constitution - Electoral Rolls - Preparation - Enumeration of voters.
Ref: From the Collector of Tanjore, Rc.18414/48,G8, dt. 20th September 1948.

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Please see the letter from the Collector of Tanjore in the c.f.

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A somewhat similar problem that may face the enumerators will be the enumeration of the blind, deaf and dumb. In the case of the blind persons, the procedure of reading over the details furnished by him, as in the case of illiterates, seems to be sufficient. As regards deaf or/and dumb, great difficulty may be experienced in getting answers from the persons themselves to the questions regarding name, father's name etc. unless they are literate. In such cases, the enumerator may fill up the form by getting such information from the person's parents or near relatives or neighbours and append a certificate to that effect.

Obvious tips. The enumerators will adopt these expedients. No instructions need. Sd. x x 26-9.

Para 2: Para 1 (1) (c) of Annexure II to G.O.No.2008, Public (Elections), dated 19-8-1948, states that a person will be entitled to be registered as a voter in the draft preliminary electoral rolls if, among other things, he or she is not of unsound mind and stand so declared by a competent court. This follows para 4 of the Sixth Schedule to the Government of India Act, reproduced below:-

> "No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court"

The old Central Legislative Assembly Electoral Rules and the Council of State Electoral Rules similarly lay down that a person adjudged by a competent court to be of unsound mind alone shall be disqualified.

The law is therefore particular that a person should be not merely of unsound mind but that he should stand so declared by a competent court. The intention is obviously that such a grave matter as unsoundness of mind should be determined by a competent court and should not left to the opinion of an individual. This provision would have worked well under the old restricted franchise when a person possessing a qualification like literacy, payment of profession tax, property tax etc, was unlikely to be of unsound mind. But under the new Constitution with its universal suffrage, this problem assumes serious propertions. It is admitted by all authorities that owing to peculiar conditions in India, the number of persons who have been declared as unsound in mind by competent courts is far less than the number who are really of unsound mind. A person may be unable to give any coherent answers or may give absurd answers, by reason of unsoundness of mind, to enable the filling up of the form and sign the declaration and yet he may not actually be declared to be of unsound mind by a competent court. In

Literacy and property tax may go together with lunacy! Sd. x x

p.t.o

In such a case, the best thing seems to be for the enumerator to leave him out of the enumeration and inform the person formally that he can apply during the supplemenentary enumeration. A person who takes the trouble to apply during the supplementary enumeration or when claims are invited under the New Electoral Law will be sane enough. All that he will have to prove is that he is not of unsound mind and stand so declared by a competent authority. However, this option to deny enumeration of persons of unsound mind should be used by enumerators sparingly and only when they fail to get coherent answers after persistent questioning.

Para 3: The question of Public servant vis a vis the residential qualifiaation has been examined in a separate file. No action seems called for here.

Our instructions in para 1 (1) (c) are based on the instructions of the Constituent Assembly of India in its letter No.CA/64/RR/47, dated 15-3-1948 - vide paragraph (1)(2) to Appendix I to that letter at (j).

In view of the statutory provisions under the existing Constitution and in view of the instructions of the Constituent Assembly of India referred to above, it will not be in order for this Government to issue executive instructions at variances with those instructions. It may be recalled that in 2 instances we departed from the instructions issued by the Constituent Assembly of India, viz., to record the details of castes of persons not belonging to minority communities and to draw up two lists, one relating to Scheduled Castes and one to Scheduled Tribes. The Constituent Assembly of India have asked us to stick to their instructions but we are going to write to them justifying our action. Therefore, in this case we need not depart from the instructions given to us by the Constituent Assembly of India as they are based on the provisions of the statutory rules under the existing Constitution.

It is for orders, however, whether the position may be explained to the Constituent Asembly of India and their instructions taken whether enumerators can refuse to enumerate persons who are patently unsound in mind even though they have not been so declared by a court of competent authority

Sd. x x
24-9-48.

Asst.Secy.

Paragraph 1 of the Collector's letter: Detailed instructions have already been issued. Invite the Collector's attention to those instructions.

Paragraph 3 of the Collector's letters: This question has already been taken up and I have circulated the file for orders. Inform the Collector that the matter is under the consideration of the Government and that instructions will issue within a few days--before the end of the month.

Paragraph 2 of the Collector's letter: Inform the Collector that the matter is under the consideration of the Government, that instructions will issue shortly and that, pending receipt of any instructions to the contrary, the qualification as laid down in paragraph 1 (c) of Annexure I to the G.O., and which follows the provisions of the existing Constitution, should be STRICTLY APPLIED, that is to say,

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even persons, who, in the opinion of the enumerator, are of unsound mind, should not be left out, unless they have been declared to be of unsound mind by a competent Court. If, however, the enumerator finds that a person is, on account of his unsoundness of mind, unable to understand the declaration in the enumeration form and sign or affix his thumb impression in token of his having understood and subscribe to the declaration, such person should be left out, and the man left to agitate his claims by way of application at the stage of supplemental enumeration or at the later stage of 'claims and objections' after the rolls have been statutorily published.

Draft to A.S. and issue ATONCE.

Sd. x x

26/9-48.

After issue of the above, circulate the file for orders with reference to my note below, after scrutiny by Secy., Legal.

Sd. x x

26/9/48.

The provision under the existing Constitution referred to in the notes above seems to have been deliberately worded as it stands, and seems to proceed on the basis that no one other than a competent Civil Court--not even a doctor who is an expert in mental diseases--can be allowed to condemn another person as being of unsound mind for the purpose of the franchise rules. The nature and consequences of unsoundness of mind vary greatly, and apart from this, there are many persons who are not of unsound mind all the time and are victims of the affliction only occasionally or at regular or at irregular intervals. We have to deal with two categories:

(1) Persons who are of unsound mind at the time of the enumeration.

(2) Persons who are of sound mind at the time of the enumeration, but are found to be of unsound mind at the time of the actual voting.

(1) As regards the first category, I think it will be sound policy to follow the procedure suggested at 'A' above. If the enumerator finds from his questioning that a person is of unsound mind and is unable to give even common-sense particulars about himself and to understand the declaration when it is read over to him, the person concerned should not be enumerated. No irrevocable harm will be done by the adoption of this procedure. The enumerator can be asked to record a note signed and dated by him, to the effect that he has left out so-and-so in such-and-such a house because he found him to be of unsound mind, his questions and the man's answers and his reasons for his opinion. If this opinion is challenged, the person concerned and his relatives will be free to agitate the matter by means of an application at the time of the supplemental enumeration this year, or at the later stage next year of 'claims and objections' when the rolls, now under preparation, are statutorily published as the Preliminary Rolls under the New Constitution. The stage of 'claims and objections' may not be reached till after April 1949, and the man will thus have time to move, and obtain a certificate from, a competent Civil Court to prove that he is of sound mind. Any such certificate, if produced, should of course, be treated as conclusive. Even under this proeedure there will be the arguable question as

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as to whether the Revising Authority which hears the claim can, on the basis of its own judgment, in the abseence of a Court Certificate, disenfranchise a man on the ground of his unsoundness of mind. This cannot be done unless the new Electoral Law gives such a power to the Revising Authority. I think that it will be sound policy to enact provisions on the following lines in the new Electoral Law:

(a) The certifiaate of a competent Civil Court that a person who has been refused enumeration or registration is of sufficiently sound mind for the purpose of exercising his franchise will be conclusive, and he must be registered as a voter and allowed to exercise his vote.

(b) If the Revising Authority rejects the claim of a person on the ground that he is of unsound mind, he should, if he obtains subsequently the declaration of a competent Civil Court as in item (a) above, be included in the electoral roll, even though, in the meantime, the electoral roll may have been published finally. The electoral roll should be decalred to be final, subject only to such additions made by the Registration Officer on the strength of Civil Court certificates.

(2) It may be that, at the time of the polling, a Polling Officer finds that the voter is of unsound mind and is unable to indicate clearly as to which candidate he wants to vote for. The Polling Officer's opinion in this matter may be challenged by one or more of the rival candidates. As any unfair or hasty opinion expressed by the Polling Officer will be immediately challenged by the candidate affected or by his authorised representative at the polling booth, we may rule out the possibility of the Polling Officer acting with MALA FIDES in this matter. I think, that, in such a case, the Polling Officer should record all the questions put by him to the voter and the answers given by the latter, and also record all his reasons for holding that the voter is not of sufficiently sound mind to exercise his franchise. It is not practicable in such cases to have any alternative but to allow the Polling Officer's decision in the matter to prevail, that is to say, the Polling Officer's decision will be final subject only to challenge by means of a competent election petition filed under the New Electoral Law. There are hardly likely to be any cases in which the result of an election would be affected, one way or the other, by the decision of the Polling Officers in such cases, such cases will be negligible in number.

Men of unsound mind would probably not come to the Polling booth at all, and the candidates can be trusted to have sufficient civic sense not to bring such persons to the Polling booths for voting for them.

I venture to make these suggestions for the consideration of the Government because I feel that we should do what we can, in fairness to the unfortunate men concerned, to eliminate persons who are not of sufficiently sound mind to exercise their franchise. The number of such persons will be a negligible fraction of our very large electorate under the New Constitution.

Secy.,Legal,may please scrutinise and advise before circulation to H.M.(Fin.) and H.PR.

Collectors will be asked to proceed with the work on the basis of the orders in circulation,and the Constituent Assembly addressed,if necessary, in the light of those orders.

Sd. x x
26-9-48. p.t.o

Draft memo with reference to Addl.Secy.'s orders on pp.3-4 ante is subd. After issue, the file may be sent to Legal.

Sd. x x
27-9-49.

Legal(after issue) after more

Pub.Elns.5219/48-2,dt.30-9-48.

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Legal 11796 dt.30-9-48.

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(Note by Addl.Secy., Public)

I have taken this file back from Secy., Legal, in order to amend the interim instructions referred to at 'A' on p.4 n.f in the light of the discussions which I had with him to-day. A copy of the amended instructions which have been issued to the Collectors is put up at (W).

The case may be handed over to Secy., Legal, at 11 A.M. on the 4th instant for recording his comments and advice before circulation to H.M.(Fin.) and H.Pr.

Sd. x
2-10-48.

Pub.Elns.5219/48-4,dt. 4-10-48

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Legal Department.

Point (1). During enumeration, the enumerators may be asked to include in a separate list all the persons, who, in their opinion, are idiots or lunatics. The grounds on which the enumerator holds the view together with the questions put to, and the answers given by, the alleged idiot or lunatic should form part of the record. This list may be kept distinct from the main list of voters who are normal in mind. It may be laid down that the lists containing the names of persons alleged to be of unsound mind should be submitted to the revising authority which will enquire into all the claims and objections in respect of the inclusion or exclusion of persons in the electoral roll; and that that authority should, wherever necessary after issuing notice to the persons concerned and making such inquiry as it thinks fit, come to a decision as to which of the names of persons included in the separate list should be retained in or omitted from the electoral roll. This procedure is suggested because the existing remedy in Civil Courts though it has the advantage of being careful and thorough is expensive and slow and inadequate for this purpose. If a person whose name has been omitted by the Revising authority from the roll on the ground that he is an idiot or of unsound mind feels aggrieved by such omission, it may be left to him to obtain a declaration from the Court to the effect that he is not so disqualified and that the omission of his name is not proper or valid and if any order of a competent court to this effect is produced, then his name may be included in the electoral roll. Public (Elections) may consider whether this procedure may not be followed.

Point (2). In view of what has been stated above, it is suggested that all persons who are in the electoral roll may be allowed to vote (We do not take notice of any changes in the mental condition of a person after the electorate list has been finalised. It does not appear to be desirable to place on the polling officer the responsibility of deciding whether the voter has, since the date of enumeration, become a person of unsound mind. A decision on this point requires

p.t.o

requires time and observation even for medical men and even after long observation it is not unusual for them to offer non-committal or hesitant opinions. The difficulty will therefore be greater in the case of lay men. This suggestion is also in accordance with rule 65(2) of the Madras Legislative Assembly Electoral Roll (Elections and Election Petitions) Rules, 1936.

Sd. x x
5-10-48. -- S. Sd. x x
5-10.
Pub.(Eln.)

Legal U.O.No.11796/47-7, dt. 5-10-48.

Public (Elections)Department

The remarks of the Legal Secretary on pp.7-9 ante may be perused and the file circulated for orders.

Sd.
7-10-48. Asst.Secy.

Both the suggestions made by the Legal Secy. may be accepted, and the Constituent Assembly addressed for their concurrence.

On re-consideration, I agree with the Legal Secretary that, once a person's name has been entered in the electoral roll as finally published, his right to vote cannot be denied except under circumstances, (disqualification on account of corrupt practices, or election offences and detention under a sentence of transportation, penal servitude or imprisonment) such as those laid down in paragraphs 8 and 9 of Part I of the Sixth Schedule to the Government of India Act,1935.

Even persons of unsound mind are being enumerated now with reference to the tentative instructions at 'W' and the enumeration forms relating to them will be dealt with in accordance with the orders that will now be passed in circulation. The question is being kept open, and the registration, as voters, of these persons in the draft preliminary electoral rolls now under preparation, will be carried out strictly in accordance with the orders of the Government.

As for procedure, I think it may be laid down under the new Electoral Law that the Revising Authority must consider and pass, according to its best judgment, orders on each of the cases of unsound mind which have been 'enumerated', and that the Revising Authority should issue a notice of hearing to the person concerned, for what it is worth, before passing orders on the case. I may mention that, under the existing Constitution, notice of objection received in respect of the inclusion of a voter's name is sent to the voter concerned, so that he might make his representations, if any, before the Revising Authority.

Sd. x x
7-10-48. Electoral rolls - Enumeration of persons of unsound mind.

Please see para 2 of Tanjore Collr's letter at pp.1-2 c.f. The instruction given by the Constituent Assembly follows the provision in the existing Constitution in respect of franchise for the Provincial and Central Legislatures. The notes from Y at p. 4. N.F. may be read and orders passed.

Sd. x x
7-10-48.

H.M.(Fin) Sd. B.G.R.
H.Pr. Sd. O.P.R. 7/10.
8-10.

p.t.o

A draft letter to the Constituent Assembly is submitted for approval.

Sd. x x
16-10-48.

More pains should have been taken over the drafting in such a matter going to the Constituency ~~Assembly~~

Approved as revised.
Put up a neat O.C. for my approval atonce.

Asst.Secy.

Sd. x x/17-10.

A neat o.c. is submitted as directed.

Sd. x x

Appd. Issue.
Sd. x x
18-10-48.
Asst.Secy.

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(Issued as Lr.No.5219/48-5,Pub.(Elecn)dt.18-10-48
(From the Constituent Assembly of India,letter
No.Ni. dt. 30-10-1948.)

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Please see the letter from the Constituent Assembly of India on p.13 c.f. in reply to this Government's letter on pp. 9-11 c.f.

2. The case relates to the question of enumeration of persons of unsound mind in the draft preliminary electoral rolls. According to the instructions of the Constituent Assembly, no person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court. This Government have, however, issued instructions that in cases also in which the enumerator is of the opinion that the person whose enumeration is under his consideration is of unsound mind but finds that he or she has not been so declared by a competent court, the enumerator should include all such persons in a separate list. This Government considered that action should be taken to eliminate persons who are not of sufficiently sound mind to exercise their franchise, and that the new electoral law should make provisions for this and suggested to the Constituent Assembly the making of a provision in the electoral law for the scrutiny and passing of orders by the Revising Authority as to inclusion or exclusion in the rolls of such persons in the list. It was also suggested that if a person whose name has been omitted by the Revising Authority on the ground of unsoundness of mind it might be left to him to obtain a declaration from the Court to the effect that he is not so handicapped and then his name could be included in the electoral roll under a special mandatory provision in this regard in the new electoral law.

The Constituent Assembly do not agree with the views of this Government. They state that the normal course is to consider every person of sound mind unless he is declared to be otherwise by a competent court and that the proposals of this Government, if accepted, would give rise to serious consequences and would disturb the finality of the rolls as finally published. They accordingly suggest that we should proceed on the basis that no special provision as suggested by this Government would be made in the electoral law to be enacted under the New Constitution. It does not seem to be worthwhile pursuing this matter any further. Any-how, the number of persons of unsound mind will be very small and will form a negligible fraction of our new electorate. The views of the Constituent Assembly may therefore be accepted.

p.t.o

Collectors have already been informed that the enumeration forms relating to persons of unsound mind should be kept separate and need not be taken into account when preparing the manuscript electoral rolls pending the receipt of further instructions from Government. In view of the ruling of the Constituent Assembly, the Collectors may now be informed that the forms need not be kept separate and should be taken into account in the preparation of the draft rolls applying strictly the qualification as it stands. Subject to orders a draft memo is submitted for consideration. Legal may see before circulation.

Sd. x x
5-11-48. Legal.

Pub.Elns.No.5219/48-6,dt.6-11-48.

Legal Department.

Seen in Legal.
Sd. x x
6-11-48.

Sd. x x
6-11-
S

Legal U.O.13048/48-1,dt.6-11-48. Pub/(Elns/)Dept.

Public(Elns.)Dept.

For orders as to circulation of the draft before issue.

Sd. x x
7-11-48.

Sd. x x
8-11-48 From p. 11, N.F.
Asst.Secy.

H.M.(Fin.) C.A. is right. Otherwise any petty officer can decalre anybody as of unsound mind.

H.PR. Sd. E.G.R.
13-11.

Sd. O.P.R.
23-11.

Issue atonce.

Sd. x x
23-11-48.

(Issued as Memo.No.5219/48-7,Pub(Elecnss) dt.23-11-48)

No further action is pending in this file. The papers may be recorded in a G.O. for facility of future reference.

Sd. x x
28-11-48.

G.O.No.2943,dt. 29-11-1948.

Elections - New Constitution - Electoral rolls - Preparation - Enumeration of persons of unsound mind - Papers Recorded.

/True copy/ R. Thangaraj 25.11.54

Office Assistant,
Madras Record Office.

PSR. 2-12-53.

BWP 15-12.

15.12